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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

LAWRENCE TEPPER,

Plaintiff and Appellant,

v.

RONALD PRESTA,

Defendant and Respondent.

B205616

(Los Angeles County
Super. Ct. No. BP101025)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Reva Goetz, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Dismissed.

Gordon & Rees, Douglas Smith, Stephanie Alexander for Plaintiff and Appellant.

Sacks, Glazier, Franklin & Lodise, Margaret G. Lodise; Law Offices of
Michael C. Hewitt, Michael G. Hewitt for Defendant and Respondent.

The probate court vacated a prior order approving the modification of a trust. This is not a “final order,” so no viable appeal may be pursued from it. Accordingly, we dismiss this purported appeal for lack of appellate jurisdiction.

FACTS

1. The Tepper Family Trust

The Tepper Family Trust (the Trust) was created in 1982. The trustors are Robert, Renee, Carolyn, Audrey and Lawrence Tepper.¹ The Trust terminates upon the later of (1) Carolyn, Audrey and Lawrence reaching age 35 or (2) the death of Robert and Renee. Upon termination, the trustee must distribute the entire balance of the principal and undistributed income to Carolyn, Audrey and Lawrence.

2. The Petition To Modify The Trust

In 2006, Lawrence petitioned the probate court to extend the termination date of the Trust until 15 years after the death of Renee. Renee, Carolyn, and Audrey consented to the proposed modification. Lawrence argued that beneficiaries may modify a trust, if they all consent to it, noting that a modification may be compelled unless: (1) the trust must be continued to carry out a material purpose of the trust, or (2) the trust includes a spendthrift clause.²

3. The Probate Court Approves The Modification

On December 20, 2006, the probate court approved Lawrence’s petition for a modification. The Trust was modified to provide that it would terminate on December 31 of the 15th year following Renee’s death.

4. Presta’s Petition To Vacate The Order Approving a Modification

In October 2007, respondent Ronald Presta asked the probate court to vacate its order extending the term of the Trust. Presta is an “interested party” who owns real

¹ The trustors at times will be referred to by their first names in this opinion. Robert and Renee are husband and wife; Carolyn, Audrey and Lawrence are their children. Robert died in 2005.

² Clause 5.2 of the Trust agreement is a spendthrift provision.

property in Newport Beach in partnership with the Trust. In 2005, after Robert Tepper's death, Presta sued the Trust, alleging that the Trust is obligated to sell its interest in the Newport Beach property to Presta as the "surviving partner." The Trust denied any obligation to sell the property to Presta because the Trust has not terminated. While Presta's lawsuit against the Trust was pending, Lawrence successfully petitioned the court to extend the termination date of the Trust for 15 years. Lawrence omitted mention of the Newport Beach property dispute in his petition to extend the trust, and gave no notice to Presta of his effort to prolong the Trust.

Presta argued that his rights are affected by the extension of the Trust, because the Trust has taken the position that Presta cannot acquire the Trust's interest in the Newport Beach property until the Trust terminates. Presta maintains that the Teppers committed an extrinsic fraud on the probate court by failing to list the Newport Beach property as a Trust asset, and by failing to advise the court about the pending litigation concerning the property: the Teppers gained an unfair advantage in the partnership lawsuit by extending the termination date of the Trust.

Lawrence demurred to Presta's petition to vacate the Trust modification order on the grounds that Presta lacks standing. Further, Lawrence asserted, the court was compelled to grant a modification because the Trust beneficiaries agreed to it. Because Presta has no right, title or interest in the Trust, Lawrence argued, Presta is not entitled to notice before the Trust is modified.

5. The Probate Court Vacates Its Prior Ruling

The probate court overruled Lawrence's demurrer to Presta's petition. On January 16, 2008, the court granted Presta's petition and vacated its order modifying the terms of the Trust. At the hearing, the court indicated that Lawrence's petition to prolong the Trust could be reset, i.e., there was no prejudice to Lawrence's renewing his request to modify the Trust.

DISCUSSION

The appeal is from the probate court's order vacating its prior approval of a Trust modification. On February 2, 2009, we requested additional briefing from the parties on

the issue of appellate jurisdiction. (Gov. Code, § 68081.) “The existence of an appealable judgment is a jurisdictional prerequisite to an appeal. A reviewing court must raise the issue on its own initiative whenever a doubt exists as to whether the trial court has entered a final judgment or other order or judgment made appealable by Code of Civil Procedure section 904.1.” (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126.)

After considering the letter briefs submitted by the parties, we have determined that an order vacating a trust modification order is not an appealable “final order.” (Prob. Code, § 1304, subd. (a)).³

The right to appeal is wholly statutory. (*Northern Trust Bank v. Pineda* (1997) 58 Cal.App.4th 603, 606.) The Probate Code provides the exclusive grounds for taking an appeal in probate proceedings. (Code Civ. Proc., § 904.1, subd. (a)(10); *Estate of Stoddart* (2004) 115 Cal.App.4th 1118, 1125-1126.) ““There is no right to appeal from any orders in probate except those specified in the Probate Code.”” (*Estate of Stoddart, supra*, 115 Cal.App.4th at p. 1126.) The Probate Code authorizes an appeal from “[a]ny final order” falling under section 17200. (§ 1304, subd. (a), italics added.) Section 17200, subdivision (b)(13) allows the court to conduct proceedings “[a]pproving or directing the modification or termination of the trust.”

On December 20, 2006, the probate court approved a modification of the Tepper Family Trust, as authorized by section 17200. The court order approving a modification of the Trust was an appealable “final order” under section 1304. No appeal was taken from it.

In the order presently being appealed, the probate court vacated its order of December 20, 2006. The order under appeal is not a “final order” within the meaning section 1304, as it neither approves nor disapproves a modification of the Tepper Family Trust. The order is an interim one that *precedes* the probate court’s eventual grant or denial of appellant’s request to modify the Tepper Family Trust, provided that appellant

³ All statutory references in this opinion are to the Probate Code, unless otherwise indicated.

renews his request to prolong the term of the Trust and a new hearing is conducted.⁴ When the court vacated its order of December 20, 2006, it did so without prejudice to appellant's renewing his petition to extend the Trust.

The order being appealed effectively grants reconsideration of the order of December 20, 2006. Reconsideration orders are not reviewable under the Probate Code. (*Estate of Stoddart, supra*, 115 Cal.App.4th at pp. 1125-1126.) Appellant argues in his letter brief that the probate court was acting under section 17203, which outlines the notice requirements imposed on a petitioner seeking to bring a trust matter to the court's attention. We disagree: the court was acting under its inherent power to vacate an order that was, in its view, the product of extrinsic fraud. Although appellant characterizes respondent's petition to vacate as a "new and legally independent proceeding," the fact remains that it was brought under the same case number as appellant's petition to extend the Trust, and is directly related to appellant's petition.

A "final order" generally is one that ends the litigation on the merits. (*Northern Trust Bank v. Pineda, supra*, 58 Cal.App.4th at p. 607.) Because the order under appeal is not the probate court's "final order" regarding appellant's proposed trust modification, there is no appellate jurisdiction.

⁴ According to respondent, appellant has renewed his petition to modify the Trust, notice was given to respondent, and a hearing on the modification is pending in the probate court.

DISPOSITION

The appeal is dismissed. As the prevailing party, respondent is entitled to recover his costs on appeal: the probate court must decide who will pay the award. (Cal. Rules of Court, rule 8.278(a)(1)-(2), (4).)

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BOREN, P.J.

We concur:

DOI TODD, J.

ASHMANN-GERST, J.